

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 28, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP693

Cir. Ct. No. 2012CV203

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

HAROLD GABBEI WHOLESALE MEATS INCORPORATED,

PLAINTIFF-RESPONDENT,

v.

WILLIAM VANDER PAS, D/B/A KOMP BROS. MARKET,

DEFENDANT-APPELLANT,

LORI KUNSTMAN, D/B/A KOMP BROS. MARKET,

DEFENDANT.

APPEAL from a judgment of the circuit court for Washington County: JAMES K. MUEHLBAUER, Judge. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

¶1 PER CURIAM. In this collection action, William Vander Pas, d/b/a Komp Bros. Market, appeals pro se from a judgment in favor of Harold Gabbei Wholesale Meats, Inc. Vander Pas claimed he was not liable for the debt because he ran the business as an LLC. We conclude sufficient evidence supported the trial court’s finding that Vander Pas was personally liable. We affirm.

¶2 In early 2008, Vander Pas purchased Komp Bros., an established meat market, deli, and bakery and associated catering business. Gabbei Meats was a vendor. Vander Pas continued the arrangement. In 2012 Gabbei Meats sued Vander Pas for unpaid bills. Vander Pas did not dispute the debt but took the position that he was not personally liable for it because he operated Komp Bros. under the name Industrial Resales LLC. Gabbei Meats contended it never had heard the name Industrial Resales or anything about an LLC until filing suit. After a bench trial, the court found as a matter of fact that Vander Pas had not disclosed that Industrial Resales LLC ran Komp Bros., making him personally liable. It also found there was insufficient evidence to award a judgment against Lori Kunstman, Vander Pas’ wife and codefendant. Vander Pas appeals.

¶3 On review of a challenge to the sufficiency of the evidence, this court employs a highly deferential standard of review. *See Morden v. Continental AG*, 2000 WI 51, ¶38, 235 Wis. 2d 325, 611 N.W.2d 659. Because the trier of fact has the opportunity to hear and observe testimony, “[i]t is the function of the trier of fact, and not of an appellate court, to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *State v. Poellinger*, 153 Wis. 2d 493, 506, 451 N.W.2d 752 (1990). We consider the evidence in the light most favorable to the trier of fact’s determination and will not overturn it if there is any credible evidence, under any reasonable view, that leads to an inference supporting it. *See Morden*, 235

Wis. 2d 325, ¶¶38-39. We may not consider whether the evidence might support a contrary conclusion, or a reasonable contrary inference. *See id.*, ¶39.

¶4 The general rule is that an agent who contracts on behalf of a corporation is not personally liable for the corporation's contractual obligations. *Benjamin Plumbing, Inc. v. Barnes*, 162 Wis. 2d 837, 848-50, 470 N.W.2d 888 (1991). An agent is liable "when the contracting party is not aware of the corporate status of the principal." *Id.* at 850. The contracting party has no duty to inquire into the principal's corporate status. *Id.* at 851. Rather, "the agent who seeks to escape liability ... has the burden of proving that the principal's corporate status was disclosed." *Id.* Whether Gabbei Meats had sufficient notice of the corporate status at the time of contracting is a question of fact. *See id.* at 852.

¶5 At trial Vander Pas testified that many vendors used credit applications; that he created a "Customer Information Sheet" ("the form") to provide to vendors like Gabbei Meats who did not use a credit application; that the form disclosed the existence of Industrial Resales LLC; that he gave the form and an Industrial Resales business card to Gabbei Meats delivery driver, Paul Stangler; that he "[a]bsolutely" told Stangler that the LLC owned Komp Bros.; and that he mailed payments to Gabbei Meats in envelopes with a stamped return address bearing the Industrial Resales LLC name. On cross-examination, he acknowledged his deposition testimony that he could not say for sure if he disclosed Komp Bros.' corporate status to anyone at Gabbei Meats, and that he did not mention or produce the form. He explained that he had forgotten about it and only came upon it after the deposition when going through boxes of records.

¶6 Gabbei Meats owners Paul and Melanie Markhardt, salesman Jeffrey Parsons, and Stangler all testified that they understood that Vander Pas owned

Komp Bros. individually and that they first learned of Industrial Resales LLC after the lawsuit was filed. Stangler testified that Vander Pas never gave him the form or told him about Industrial Resales LLC, calling Vander Pas' assertion "laughable." Parsons testified that everything was done verbally and that he never saw the form until the lawsuit was filed. Melanie, who kept Gabbei Meats' books, also testified that she did not see the form before they filed suit and that she then looked for it in their records, to no avail. She recalled payments from Komp Bros. coming in a two-window envelope with Komp Bros.' name and address from the check showing through one window as the return address and Gabbei Meats' name and address from the check showing through the other.

¶7 The court accepted that the envelope Vander Pas described was the one used for mailing payments but that it did not constitute adequate notice. It found Vander Pas' claim that he informed Stangler about the LLC not credible. The court noted that even if it took the testimony as "absolutely gospel truth" and considered it with the envelope, there still was insufficient notice of the business's status as an LLC. This finding is amply supported by the evidence. We affirm.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

